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Prestige of Ramsey, Inc., improperly pleaded as Prestige Lexus of Ramsey, Prestige Lexus and Prestige Lexus of Ramsey, Dean Kreismer and Donason Hendrickson

UNITED STATES DISCTRICT COURT
THE DISTRICT OF NEW JERSEY

JEFFREY MICHNE AND KELLEIGH MCKENZIE, Plaintiffs, vs PRESTIGE OF RAMSEY, INC. A/K/A PRESTIGE LEXUS OF RAMSEY, INC.; PRESTIGE LEXUS; PRESTIGE LEXUS OF RAMSEY; PRESTIGE MANAGEMENT SERVICES, INC.; DEAN KREISMER; DONASON HENDRICKSON; COLLEEN MCMASTER; ABC CORPORATIONS 1-10 (FICTITIOUS DESIGNATIONS); AND JOHN DOES 1-10 (FICTITIOUS DESIGNATIONS), Defendants.	**DOCKET NO.: CV-01393** **CIVIL ACTION** **ANSWER, AFFIRMATIVE DEFENSES AND JURY DEMANDS**

Defendants, Prestige of Ramsey, Inc., improperly pleaded as Prestige Lexus of Ramsey, Prestige Lexus and Prestige Lexus of Ramsey, Dean Kreismer and Donason Hendrickson, by way of Answer to the Complaint, say:

PARTIES

1. The defendants are without sufficient information from which to form a belief as to the veracity of the allegations contained in paragraph 1.
2. The defendants are without sufficient information from which to form a belief as to the veracity of the allegations contained in paragraph 2.
3. The defendants are without sufficient information from which to form a belief as to the veracity of the allegations contained in paragraph 3.
4. The defendants admit the allegations contained in paragraph 4.
5. The defendants admit the allegations contained in paragraph 5.
6. The defendants admit the allegations contained in paragraph 6.
7. The defendants admit the allegations contained in paragraph 7.
8. The defendants make no answer to the allegations contained in paragraph 8, as paragraph 8 contains no allegations against them. Insofar as paragraph 8 is deemed to contain allegations against the defendants, they are denied.

9. The defendants make no answer to the allegations contained in paragraph 9, as paragraph 9 contains no allegations against them. Insofar as paragraph 9 is deemed to contain allegations against the defendants, they are denied.

10. The defendants make no answer to the allegations contained in paragraph 10, as paragraph 10 contains no allegations against them. Insofar as paragraph 10 is deemed to contain allegations against the defendants, they are denied.

JURISDICTION

1. Answering Defendants, Prestige of Ramsey, Inc., improperly pleaded as Prestige Lexus of Ramsey, Prestige Lexus and Prestige Lexus of Ramsey, Dean Kreismer and Donason Hendrickson, hereby incorporate by reference the answers to all paragraphs contained in all previous Counts, as though same were fully set forth herein at length.

2. The defendants admit the allegations contained in paragraph 2.

3. The defendants admit the allegations contained in paragraph 3.

FACTUAL ALLEGATIONS

1. Answering Defendants, Prestige of Ramsey, Inc., improperly pleaded as Prestige Lexus of Ramsey, Prestige Lexus and Prestige Lexus of Ramsey, Dean Kreismer and Donason Hendrickson, hereby incorporate by reference the answers to all paragraphs contained in all previous Counts, as though same were fully set forth herein at length.

2. The defendants make no answer to the allegations contained in paragraph 2, as paragraph 2 contains no allegations against them. Insofar as paragraph 2 is deemed to contain allegations against the defendants, they are denied.

3. The defendants admit the allegations contained in paragraph 3.

4. The defendants deny the allegations contained in paragraph 4 and leave the Plaintiffs to their proofs.

5. The defendants admit the allegations contained in paragraph 5.

6. The defendants make no answer to the allegations contained in paragraph 6, as paragraph 6 contains no allegations against them. Insofar as paragraph 6 is deemed to contain allegations against the defendants, they are denied.

7. The defendants deny the allegations contained in paragraph 7 and leave the Plaintiffs to their proofs.

8. The defendants are without sufficient information from which to form a belief as to the veracity of the allegations contained in paragraph 8.

9. The defendants deny the allegations contained in paragraph 9 and leave the Plaintiffs to their proofs.

10. The defendants admit the allegations contained in paragraph 10.

11. The defendants admit the allegations contained in paragraph 11.

12. The defendants make no answer to the allegations contained in paragraph 12, as paragraph 12 contains no allegations against them. Insofar as paragraph 12 is deemed to contain allegations against the defendants, they are denied.

13. The defendants deny the allegations contained in paragraph 13 and leave the Plaintiffs to their proofs.

14. The defendants deny the allegations contained in paragraph 14 and leave the Plaintiffs to their proofs.

15. The defendants deny the allegations contained in paragraph 15 and leave the Plaintiffs to their proofs.

16. The defendants deny the allegations contained in paragraph 16 and leave the Plaintiffs to their proofs.

17. The defendants deny the allegations contained in paragraph 17 and leave the Plaintiffs to their proofs.

18. The defendants admit the allegations contained in paragraph 18.

19. The defendants are without sufficient information from which to form a belief as to the veracity of the allegations contained in paragraph 19.

20. The defendants are without sufficient information from which to form a belief as to the veracity of the allegations contained in paragraph 20.

21. The defendants are without sufficient information from which to form a belief as to the veracity of the allegations contained in paragraph 21.

22. The defendants deny the allegations contained in paragraph 22 and leave the Plaintiffs to their proofs.

23. The defendants deny the allegations contained in paragraph 23 and leave the Plaintiffs to their proofs.

24. The defendants are without sufficient information from which to form a belief as to the veracity of the allegations contained in paragraph 24.

25. The defendants are without sufficient information from which to form a belief as to the veracity of the allegations contained in paragraph 25.

26. The defendants are without sufficient information from which to form a belief as to the veracity of the allegations contained in paragraph 26.

27. The defendants are without sufficient information from which to form a belief as to the veracity of the allegations contained in paragraph 27.

FIRST COUNT

1. Answering Defendants, Prestige of Ramsey, Inc., improperly pleaded as Prestige Lexus of Ramsey, Prestige Lexus and Prestige Lexus of Ramsey, Dean Kreismer and Donason Hendrickson, hereby incorporate by reference the answers to all paragraphs contained in all previous Counts, as though same were fully set forth herein at length.

2. The defendants deny the allegations contained in paragraph 2 and leave the Plaintiffs to their proofs.

3. The defendants deny the allegations contained in paragraph 3 and leave the Plaintiffs to their proofs.

4. The defendants deny the allegations contained in paragraph 4 and leave the Plaintiffs to their proofs.

5. The defendants deny the allegations contained in paragraph 5 and leave the Plaintiffs to their proofs.

6. The defendants deny the allegations contained in paragraph 6 and leave the Plaintiffs to their proofs.

SECOND COUNT

1. Answering Defendants, Prestige of Ramsey, Inc., improperly pleaded as Prestige Lexus of Ramsey, Prestige Lexus and Prestige Lexus of Ramsey, Dean Kreismer and Donason Hendrickson, hereby incorporate by reference the answers to all paragraphs contained in all previous Counts, as though same were fully set forth herein at length.

2. The defendants make no answer to the allegations contained in paragraph 2, as paragraph 2 contains no allegations against them. Insofar as paragraph 2 is deemed to contain allegations against the defendants, they are denied.

3. The defendants make no answer to the allegations contained in paragraph 3, as paragraph 3 contains no allegations against them. Insofar as paragraph 3 is deemed to contain allegations against the defendants, they are denied.

4. The defendants make no answer to the allegations contained in paragraph 4, as paragraph 4 contains no allegations against them. Insofar as paragraph 4 is deemed to contain allegations against the defendants, they are denied.

5. The defendants make no answer to the allegations contained in paragraph 5, as paragraph 5 contains no allegations against them. Insofar as paragraph 5 is deemed to contain allegations against the defendants, they are denied.

6. The defendants make no answer to the allegations contained in paragraph 6, as paragraph 6 contains no allegations against them. Insofar as paragraph 6 is deemed to contain allegations against the defendants, they are denied.

THIRD COUNT

1. Answering Defendants, Prestige of Ramsey, Inc., improperly pleaded as Prestige Lexus of Ramsey, Prestige Lexus and Prestige Lexus of Ramsey, Dean Kreismer and Donason Hendrickson, hereby incorporate by reference the answers to all paragraphs contained in all previous Counts, as though same were fully set forth herein at length.

2. The defendants deny the allegations contained in paragraph 2 and leave the Plaintiffs to their proofs.

3. The defendants deny the allegations contained in paragraph 3 and leave the Plaintiffs to their proofs.

FIRST AFFIRMATIVE DEFENSE

The accident, injuries and damages alleged were caused or contributed to by the Plaintiffs, in that he failed to adequately use his senses and sensibilities in guarding against and mitigating the harm now complained of, for which negligence her recovery, if any should be barred or mitigated by the applicable laws concerning comparative negligence now prevailing in the State of New Jersey.

SECOND AFFIRMATIVE DEFENSE

The accident, injuries and damages alleged were caused or contributed to by the negligence of a person or persons other than this defendant and over whom this defendant had no control.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs fails to state a cause of action for which relief can be granted against this defendant.

FOURTH AFFIRMATIVE DEFENSE

The cause of action as alleged is barred by the provisions of the Statute of Limitations in such case made and provided by the laws of the State of New Jersey, to wit, N.J.S.A. 2A:14-1, et seq.

FIFTH AFFIRMATIVE DEFENSE

The Plaintiffs are estopped from bringing the within action.

SIXTH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

The accident, injuries and damages were caused or contributed to by the Plaintiffs in that they failed to mitigate and guard against aggravation of any injuries sustained by him on the date in question.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs failed to comply with provisions of the Contract in question.

NINTH AFFIRMATIVE DEFENSE

The incident and/or damages alleged were not proximately caused or contributed to by any action or lack of action by this defendant.

TENTH AFFIRMATIVE DEFENSE

Defendant neither owed nor breached any duty to Plaintiffs for which a cause of action can be or compensation be awarded.

ELEVENTH AFFIRMATIVE DEFENSE

At the time and place mentioned in the Complaint, the defendant violated no legal duty owing by it to the Plaintiffs.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs claim in this matter is barred because Plaintiffs failed to file a claim in accordance with the policy of insurance on which Plaintiffs sues.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs claim in this matter is barred because Plaintiffs failed to file a Sworn Statement in Proof of Loss in accordance with the policy of insurance on which Plaintiffs sues.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs claim in this matter is barred because Plaintiffs failed to institute suit within the time period required under the policy of insurance on which Plaintiffs sues.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs claim in this matter is barred because Plaintiffs did not sustain a loss covered under the policy of insurance issued by this party.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs claim in this matter is barred because Plaintiffs failed to produce certain documents, records or otherwise cooperate with this defendant regarding its investigation of the loss in question.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs claim in this matter is barred because Plaintiffs breached the conditions subsequent and precedent set forth in the policy on which Plaintiffs sue.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs claim in this matter is barred because Plaintiffs failed to give this defendant prompt notice of the loss, including a detailed accurate description of how the loss occurred.

NINETEENTH AFFIRMATIVE DEFENSE

The losses and claims asserted against this defendant insured are not covered under the policy of insurance in question because they did not result due to an occurrence.

TWENTIETH AFFIRMATIVE DEFENSE

The coverage provided by this defendant is the precise coverage this defendant was requested to issue.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The Plaintiffs have no legal liability to the demand.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The issues in question are improper for declaratory relief.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs claim in this matter is premature.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The policy of insurance referred to in Plaintiffs Complaint does not provide for the within action or relief as alleged.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs failed to provide proper notice pursuant to Longworth v Ohio Casualty Group of Insurance Co., 213 N.J. Super. 70, 84 (Law Div. 1986) and therefore barred from recovering under the policy of insurance in question.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Any claims against defendant is barred or diminished by contributory or comparative negligence of Plaintiffs for which negligence the recovery, if any, should be barred or mitigated in accordance with the provisions of N.J.S.A. 2A:15-5.1, et. seq.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The Plaintiffs so acted at the time and place alleged as to assume the risks of their conduct.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs failure to employ available seat belts or shoulder belts either caused or enhanced Plaintiffs injuries.

TWENTY-NINTH AFFIRMATIVE DEFENSE

The action is barred by the provision of N.J.S.A. 39:6A-1, et seq.

THIRTIETH AFFIRMATIVE DEFENSE

The accident, injuries and damages were caused or contributed to by the Plaintiffs who failed to mitigate and guard against aggravation of any injuries sustained on the date in question.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs claims are barred by the entire controversy doctrine.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs claims are barred by the doctrine of res judicata and/or collateral estoppel.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Any injuries or damages which form the basis of this Complaint were the direct result of the acts, omissions and/or negligence of other person, parties and/or entities over whom this defendant had no control or authority.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs claims are barred by the Worker's Compensation Law, N.J.S.A. 34:15-1, et seq. which is inclusive of N.J.S.A. 34:15-8.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Defendant neither owed nor breached any duty to Plaintiffs based upon status at the time of the incident which a cause of action or compensation be awarded.

CROSSCLAIM FOR CONTRIBUTION

While denying liability for damages to the Plaintiffs, Jeffrey Michne and Kelleigh Mckenzie, should Defendants, Prestige of Ramsey, Inc., improperly pleaded as Prestige Lexus of Ramsey, Prestige Lexus and Prestige Lexus of Ramsey, Dean Kreismer and Donason Hendrickson, be adjudged liable to the Plaintiffs, Answering Defendants asserts that Co-Defendant, Colleen Mcmaster, is joint tortfeasors and therefore, Answering Defendants demands contribution pursuant to the Joint Tortfeasor Act, N.J.S.A. 2A:53A-1, et seq., the Comparative Negligence Act of New Jersey, N.J.S.A., 2A:15-5.1 et seq.

CROSSCLAIM FOR INDEMNIFICATION

Answering Defendants, Prestige of Ramsey, Inc., improperly pleaded as Prestige Lexus of Ramsey, Prestige Lexus and Prestige Lexus of Ramsey, Dean Kreismer and Donason Hendrickson, asserts that they are entitled to be indemnified and saved harmless from all loss or liability including attorneys fees and defense costs arising from the litigation by the Co-Defendant, Colleen Mcmaster, pursuant to common law and/or contract. Answering Defendants further asserts that his/her alleged tortious wrongdoing, if any, was secondary, imputed and vicarious and that the alleged tortious wrongdoing, if any, of the Co-Defendant were the primary, active and direct cause of the delict and damages alleged by the Plaintiffs.

REPLY TO ALL CROSSCLAIMS

Answering Defendants, Prestige of Ramsey, Inc., improperly pleaded as Prestige Lexus of Ramsey, Prestige Lexus and Prestige Lexus of Ramsey, Dean Kreismer and Donason Hendrickson, deny that they are responsible for either indemnification or contribution to the Co-Defendant, Colleen Mcmaster, on any Crossclaim that is presently asserted against him or may be asserted against them.

DEMAND FOR JURY TRIAL

Demand is hereby made for a trial by jury.

DEMAND FOR INTERROGATORIES

Demand is hereby made for answers to Form A and supplemental interrogatories along with a Notice to Produce.

DESIGNATION OF TRIAL COUNSEL

Mario C. Colitti, Esq. is hereby designated as trial counsel for the defendants, Prestige of Ramsey, Inc., improperly pleaded as Prestige Lexus of Ramsey, Prestige Lexus and Prestige Lexus of Ramsey, Dean Kreismer and Donason Hendrickson.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Answer was served within the time prescribed by Fed. R. Civ. P. 6 (b).

Law Offices of Viscomi & Lyons
Attorneys for Defendants,
Prestige of Ramsey, Inc., improperly pleaded as Prestige Lexus of Ramsey, Prestige Lexus and Prestige Lexus of Ramsey, Dean Kreismer and Donason Hendrickson

BY: ______________________
Mario C. Colitti

Dated: May 9, 2016